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ON *EGREGIUM PUBLICUM* (TAC. Ann. III. 70. 4).

BY CLEMENT LAWRENCE SMITH.

AMONG other incidents of the year 22, Tacitus mentions the attempt made in the Senate by some unnamed *delator* to prosecute one Lucius Ennius on a charge of *maiestas* for 'having converted the emperor's image to the common uses of silver.' Tiberius declined to treat the melting of himself in effigy as a serious insult, and put a stop to the proceedings by his veto. Thereupon Ateius Capito, the eminent jurist, arose, and with great show of independence, — *ea sola species adulandi supererat*, — protested warmly against the emperor's action in taking the decision out of the hands of the Senate, and shielding such wickedness from punishment; it was all very well for the prince to treat the indignity offered to himself with indifference, but he should not be so free with the wrongs done the state. Tiberius saw through this bluster, and persisted in his veto; and Tacitus is moved to comment with some severity on the great lawyer's discreditable exhibition of himself. His words, according to the traditional text, are:—

'Capito insignitior fama fuit quod humani divinique iuris sciens egregium publicum et bonas domi artes dehonestavisset.'

The peculiar phrase *egregium publicum* has been rendered in a variety of ways, but all the explanations which have been offered fall into two classes, represented, among recent editors, by Nipperdey and Furneaux, respectively. The former translates the phrase by 'den Ruhm des Staats,' while the latter prefers, though with some hesitation, to explain it as Capito's own 'distinction in the state as a consular and leading senator,' in contrast with his juristic learning, which both editors think is expressed, 'as an accomplishment of private life,' by *bonas domi artes*. All editors agree that Capito's eminence as a lawyer is expressed in one or other of the objects of *dehonestavisset*; and it is, indeed, inconceivable that Tacitus should have spoken of anything as dishonored by his servility, and left that out.

Walther is the only editor, so far as I am aware, who refers *domi artes* to personal character and private life exclusively; and in this I think he is right. No doubt *domi artes* is frequently used in a wider sense, and with more especial reference to a man's professional accomplishments, as in IV. 6. 2: *claritudinem militiae, inlustres domi artes*. But, as Mr. Furneaux himself intimates, the contrast with *militiae* is lacking in our present passage, and there is therefore no necessity for supposing that all the accomplishments of peace, — *civiles artes*, — are summed up in the phrase. My difficulty in finding in it a description of the professional merits of Capito lies in the absurdly inadequate epithet *bonas* to characterize the learning and ability of one of the greatest lawyers of his time, the founder of a school of jurisprudence. Applied to his personal qualities, it is, in the opinion of Tacitus at least, all that he deserves. The use of *artes* to denote qualities of character is fully established by such examples as *sanctissimis Arruntii artibus*, VI. 7. 1; *luxuria industria, comitate adrogantia, malis bonisque artibus mixtus*, Hist. I. 10; *industriæ eius innocentiaque, quasi malis artibus infensi*, ibid. I. 45; *Victorinum, pietate mansuetudine veritate innocentia maxima, omnium denique optimarum artium præcipuum virum* Fronto, de Nepote amisso, Epist. 2.

But if *bonas domi artes* refers to personal character only, can we find in *egregium publicum* the allusion to professional eminence which we all feel must be expressed somewhere in the clause?

Editors usually base their interpretation of these words on the questionable analogy of the familiar phrases, *bonum publicum*, *malum publicum*, and their rare variations, *optimum publicum*, *pessimum publicum* (Gell. VII. 3, Liv. II. 1. 3, Varro, R. R. I. 13. 7). The analogy seems to me questionable because *egregium* has not, like *bonum* and *malum*, acquired the recognized character of a substantive to which an adjective may be attached; and *optimum* and *pessimum*, in the few cases where they are joined with *publicum*, cannot be regarded as independent examples, but have borrowed their substantial character from their positives in the same connection. *Divinum publicum*, quoted by Ruperti from Liv. VIII. 10. 13, is not analogous, because *divinum* is there a special act (religious ceremony), usually expressed by *divina res*, and not an abstraction, as *egregium* is held to be here. Equally irrelevant, for the same reason,

is the citation of *tamquam egregium*, VI. 24. 3, 'as if it were an admirable thing.' Any suitable adjective may be used as a substantive in this sense.

But if the analogy holds good, what meaning does it give to *egregium publicum*? It is agreed on all hands that *publicum* in *bonum publicum*, etc., is an adjective, that *bonum* and *malum* express 'the interest' and 'the disadvantage' of the state respectively, and that *optimum* and *pessimum* express in a higher degree the same thing,—the 'highest interests' and the 'greatest disadvantage' of the state. In like manner *egregium* is held to be a substantive, and it can only mean 'the eminence' or 'the excellence' or, as Nipperdey renders it, 'the glory' of the state. It cannot mean the eminence or excellence of the individual, or even his eminent position in the community, because *publicum* denotes what belongs to the community in contrast with what belongs to the individual. This contrast is always implied, and, on occasion, expressed, as in Ruperti's citation from Livy, quoted above, which is in full: *ni moritur, neque suum neque publicum divinum pure faciet qui sese devoverit*; or Cic. Brut. 329: *Hortensii vox extincta fato suo est, nostra publico*. *Egregium publicum* can be made to mean 'his eminent public position' only by taking *publicum* as the substantive, and importing into it the meaning of 'position in the eyes of the people,' from its use in such phrases as *prodire in publicum*, *abstinere publico*, etc. This is not supported by any example, and no editor has proposed it. All prefer to rest on the analogy of *bonum publicum*, etc., though many draw from this analogy an interpretation which it will not yield. *Egregium publicum* will not supply the reference to Capito's personal eminence, without which the words of the historian are little short of absurd.

In casting about for a solution of this difficulty, it has occurred to me that what Tacitus probably wrote here was

egregium publice locum,

and that from this some copyist, by an easy blunder, due to the similarity of the penultimate syllables of the last two words, produced our present reading.

The use of *publice* here suggested is precisely similar to its use in *pari fama publice*, I. 13. 1, and in the following, which presents

also a similar form of phrase : *nonum se annum iam velut in aciem adversus optumates maximo privatim periculo, nullo publice emolumento stare*, Liv. VI. 39. 6. In meaning, the phrase is almost identical with *principem in civitate locum*, which Tacitus uses with reference to Capito, in speaking of his death a few chapters further on (75. 1). This position he attained, Tacitus tells us, *civilibus studiis*, so that we have in the proposed reading the missing allusion to his professional distinction, and need not impose on *bonas domi artes* a meaning it will not bear.